ATOMIC ENERGY COMMISSION

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BEFORE THE FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE
HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT OPERATIONS
ON
CLASSIFICATION POLICIES AND PRACTICES

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I am very happy to appear before your subcommittee this morning to discuss pending legislation concerning the classification and declassification of official information and the AEC's experience under Executive Order 11652 which provides the framework for the classification and declassification of national security information.

As you know, the Atomic Energy Act requires the Atomic Energy Commission to operate within a special framework for the classification and declassification of atomic energy information. The Act includes a mandate on the problem we are discussing today; namely, assuring that information important to the national security receives adequate protection while all other information is fully and freely disseminated. The Atomic Energy Act establishes a special category of atomic energy information called Restricted Data which is defined as

> "All data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142."

In effect, this definition classifies atomic energy information from its inception. While national security information is limited to information generated in Government programs, information meeting the definition of Restricted Data, no matter where generated or by whom

generated, is Restricted Data and its disclosure is subject to penalty. The Atomic Energy Act requires the Commission to safeguard Restricted Data in such a manner as to assure the common defense and security, and at the same time to remove as much information from that category as national security permits, so as to facilitate the free exchange of ideas which is essential to scientific and technical progress and to public understanding.

The two basic objectives which the Atomic Energy Act applies in the atomic energy field are the same as those which the Executive Order applies on a government-wide basis. After describing the basic objectives of the government with respect to the classification, declassification, and dissemination of information, the Executive Order proceeds to establish specific policies and procedures to be employed by the departments and agencies of the Executive Branch in carrying out these objectives. We at the Atomic Energy Commission believe that, fundamentally, a combination of the Atomic Energy Act and the Executive Order provide the basis for an effective and equitable classification and declassification program for atomic energy information.

I believe that the Atomic Energy Commission has been diligent in carrying out its two-fold responsibility for the broad dissemination of information while protecting data affecting the national defense and security.

As an indication of the Commission's responsiveness to the provisions of the Atomic Energy Act and the Executive Order, a recent review of our

classification guides and of our declassification work indicates that over 75% of the information that constituted Restricted Data in 1947 has since been declassified. As an example of our continuing efforts to make more information available to the public, the Atomic Energy Commission has, since July 1971 declassified as of June 30 of this year nearly 1-1/4 million classified documents, and we are continuing our comprehensive classification reviews of AEC classified holdings.

In addition, our classification guides which use the classifications prescribed in the Executive Order; namely Top Secret, Secret and Confidential, are under constant review and are being revised to permit the release of additional information as rapidly as the requirement to protect the national defense and security will permit.

One of the other important aspects of the Executive Order is the emphasis it places on assuring that only documents which require classification in the interest of national security will be classified. The Executive Order specifically points out that classification is not to be used to avoid embarrassment to individuals or to agencies. The AEC's classification and declassification program has been designed to meet these objectives, taking its basic classification guidance from the Atomic Energy Act as a statutory base and using the provisions of Executive Order 11652 for detailed implementation.

One of the provisions of the order designed to reduce the number of classified documents was the requirement that those authorized to classify be specifically designated and held personally responsible for their actions

and that such individuals be limited in number. As a result, the number of classifying officials in the AEC has been reduced by a third, to a total of 4,561. Of this number, only 24 have Top Secret classification authority.

In general, Executive Order 11652 has not had as great an impact on the AEC as it may have had on other agencies, since AEC practices already include a number of the requirements that the Order prescribed. However, it did provide a firmer base for the established practices at the AEC and in addition it provided new means for helping to reduce the number of classified documents generated and of monitoring the classification and declassification practices of all government agencies.

The Order has also helped very significantly by establishing the Interagency Classification Review Committee which has become very effective in monitoring the classification and declassification practices of the Executive Branch.

With regard to H.R. 12004, we note that it contains only passing reference to the applicability of other statutes. In view of the unique classification provisions of the Atomic Energy Act, we would hope that any final legislation will explicitly refer to the Atomic Energy Act in a manner similar to that employed in Executive Order 11652 and that it will specifically state that the legislation does not supersede the provisions of the Atomic Energy Act of 1954 as amended. We believe a special exemption, such as appears in Section 8 of the Executive Order, to be necessary and far more desirable than the general language set forth

in some of the proposed legislation, which simply refers to the application of "other statutes". Language which makes it clear that any new legislation is not meant to supersede the provisions of the Atomic Energy Act would eliminate questions about the respective relationships and responsibilities of various agencies and organizations under any new legislation.

H.R. 12004 varies from the Executive Order in other respects which are extremely troublesome to us. Among these are the accelerated rate of the general declassification schedule and the automatic declassification scheme for exempted materials, which are set on the basis of time rather than the nature of information involved. We do not feel that either of these variations from the Executive Order serves to promote the common defense and security of the United States. With regard to automatic declassification, it is important to note that frequently, single, quite sensitive items of information (Restricted Data is a possible example) are incorporated in documents which otherwise could be declassified if the critical items were deleted. The title or description of such a document would probably make it appear that the document as a whole could be declassified. Yet such declassification would reveal information the protection of which is of great importance to the national security. Accordingly, it is our view that while categories of information may be declassified as such, documents must be reviewed by knowledgeable classification officers before they can be safely declassified and released.

As indicated above, our experience has shown that one cannot declassify a document merely on the basis of a description of it. We have also come to

the realization that one cannot declassify information solely on the basis of the passage of a specific period of time as provided in H.R. 12004. Some information retains its security value for very long periods of time. I believe, for example, we can safely say that details permitting fabrication of a nuclear weapon developed over 20 years ago should still remain classified.

We do not believe that the establishment of a Classification Review Commission as proposed in H.R. 12004 is either necessary or desirable. In light of our obligation to provide information to the Joint Committee (Section 202 of the Atomic Energy Act) and the nonapplicability of Congressional requests of the Freedom of Information Act's exemptions from disclosures, we view the creation of a body to handle such requests as unnecessary. Furthermore, it is apparent that the proposed role of the Classification Review Committee within the classification and declassification framework is an enormous one that would create equally enormous administrative burdens for all government agencies. We question the advisability of creating a Review Commission with the sizable staff and budget obviously necessary to carry out the proposed duties of this Commission.

Acting within the provisions of the Atomic Energy Act and Executive Order 11652, the Commission has, as noted previously, conducted a classification and declassification program which carries out the objectives both of the statute and of the Order. The Commission's program has as its objectives both the reduction in the generation of classified

documents and the declassification of as many as possible, as soon as possible, of the Commission's currently classified documents. We believe that we have been successful in meeting these objectives. Our extensive use of classification guides developed and kept current in accordance with the basic policy approved by the Commission as required by the Atomic Energy Act, and the requirements set forth in the Executive Order that classification be carried out only by specifically authorized classifiers, has kept the generation of classified documents to a minimum. Our intensified program for the review of classified documents has brought about a considerable reduction in the classified holdings of the AEC and has made a large amount of information available for use by industry and the public.

In summary, we believe that the administration of Executive Order 11652 monitored as it is by the Interagency Classification Review Committee is now demonstrating its effectiveness in maintaining a balanced classification system and in decreasing the number of classified documents being generated.

As for precise standards which could be utilized to measure the delicate balance between the necessity for classification on the one hand and the necessity for public access to information on the other, there is no simple solution. We would like to stress that the establishment of classification policy requires the application of a broad knowledge and understanding of all of the aspects and implications involved in release versus protection. We do not believe that declassification can be safely carried out by simple fiat. To the extent that

a balancing system can be established, however, it has been our experience under the Executive Order and under the Atomic Energy Act, that an adequate system already exists. In the case of the AEC, this system is considerably enhanced by the provisions for oversight by the Congressional Joint Committee on Atomic Energy.